

A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 539 in relation to prohibiting the sale or distribution of flavored tobacco products.

BE IT ENACTED by the County Board of the County of Westchester as follows:

**Section 1.** The Laws of Westchester County are hereby amended to include a new Chapter 539 to read as follows:

**CHAPTER 539**  
**BAN ON SALE OR DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS**

Sec. 539.01 Definitions.

Sec. 539.11 Sale or Distribution of Flavored Tobacco Products Prohibited.

Sec. 539.21 Enforcement and Penalties.

Sec. 539.31 Severability.

**Section 539.01 Definitions.**

1. “Characterizing Flavor” means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing Flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma or both, as described in the first sentence of this definition that constitutes a Characterizing Flavor.
2. “Distinguishable” means perceivable by either the sense of smell or taste.
3. “Establishment” means any store, business, stand, booth, or concession, or any other commercial enterprise, which engages in any retail sale of Tobacco Products, including but not limited to entities engaging in the retail sale of food items.
4. “Flavored Tobacco Product” means any Tobacco Product that imparts a

Characterizing Flavor.

5. “Labeling” means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its Packaging.
6. “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer.
7. “Tobacco Product” means (a) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, little cigars (“cigarillos”), chewing tobacco, or snuff; (b) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, and any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine and whether or not sold separately; or (c) any component, part, or accessory of (a) or (b), whether or not sold separately. For purposes of this Chapter, “Tobacco Product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

**Section 539.11 Sale or Distribution of Flavored Tobacco Products Prohibited.**

1. The sale, distribution, display, offer for sale or distribution, or marketing for sale or distribution, by an Establishment of any Flavored Tobacco Product is prohibited.
2. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a manufacturer, retailer, or distributor of the Tobacco Product, or any agent or employee thereof in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product imparts a Characterizing Flavor, including, but not limited to, text, color, and/or images on the Tobacco Product’s Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product imparts a Characterizing Flavor.
3. The presence of a Flavored Tobacco Product on the premises of an Establishment shall

create a rebuttable presumption that the Flavored Tobacco Product is being offered for sale by the Establishment.

**Section 539.21 Enforcement and Penalties.**

1. The Westchester County Department of Health is solely authorized to enforce this Chapter.
2. Any Establishment that violates any provision of this Chapter:
  - (a) Shall be subject to a fine or civil penalty of a minimum of \$300.00, but not to exceed \$1,000.00, for a first violation within a two-year period; and
  - (b) Shall be subject to a fine or civil penalty of a minimum of \$500.00, but not to exceed \$1,500.00, for each subsequent violation within a two-year period.
3. If an Establishment violates a provision of this Chapter three times or more within a two- year period, then, in addition to any other penalty permitted by this Section, the Westchester County Department of Health shall request that the New York State Commissioner of Taxation and Finance suspend the Establishment's applicable registration(s) for six months.
4. Nothing in this Section is intended to conflict with any provision of New York State Public Health Law § 1399-ee. No Establishment shall be penalized for the same violation under both this Section and New York State Public Health Law § 1399-ee.
5. Nothing in this Chapter shall be construed to penalize the purchase, use, or possession of a Tobacco Product by any person not engaged in the retail sale of Tobacco Products.

**Section 539.31 Severability.**

If any clause, sentence, paragraph, or section of this Chapter shall be held invalid by any court of competent jurisdiction, or the application of this Chapter to any person or set of circumstances shall be held invalid, such invalidity or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence,

paragraph, section, or operation of this Chapter directly involved in the controversy in which the judgment shall have been rendered. To further this end, the provisions of this Chapter are hereby declared to be severable.

**Section 2.** This local law shall take effect six (6) months after enactment.